IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12026 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUNAL KRISHNACHANDRA SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12026 of 2003

MR ASHISH H SHAH for Petitioner No. 1

MR DA DESAI, Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/09/2003

ORAL JUDGEMENT

1. Rule. Mr.Desai, learned AGP waives service of rule on behalf of the respondents. With the consent of

the parties, the matter is taken up for final hearing today.

2. The question arises for consideration is whether the subject of Informatics Practices can be said to be a computer related subject or not.

3. The short facts of the case are that the petitioner is one of the students, who has passed the 12th Standard examinations conducted by CBSE from the School situated in Gujarat. When the petitioner appeared in 12th Standard Examinations, one of the subjects opted by the petitioner was Informatics Practices. The petitioner has placed on record the syllabus for the said subject which, inter alia, includes Computer Graphics, Computers, Communication and Data Security, Advanced Lotus 1-2-3, Advanced MS-Excel-I, Advanced MS-Excel-II, Foxpro Revision Tutor, Functions, Windows, Menus and Popus in Foxpro, Structured Programming in Foxpro, Reporting through programming, Importing and Exporting Data, Structured Query Language and IT Solutions. It is the case of the petitioner that the petitioner applied for getting admission on the basis of marks obtained in the subjects, including the subject of Informatics Practices which, as per the say of the petitioner, is computer related subject and, therefore, the contention of the petitioner is that as per Rule 11, the marks of the petitioner for the purpose of preparing merit list should be made accordingly. However, respondent No.3 has excluded the marks obtained in the said subject of Informatics Practices and has treated that the subject is not computer related and has placed the petitioner in the merit list and, therefore, this petition.

4. The contention raised on behalf of the petitioner is that since Informatics Practices is computer related subject and since the language of the rule is to include computer related subjects, the marks obtained in the theory of the said subjects could have been included for the purpose of considering, inter se, merit of the CBSE Examinations for admission to professional colleges by respondent No.3.

5. On behalf of the respondents Mr.Desai, learned AGP submitted, inter alia, that the course of computer science is based on developing programming skills, whereas in the case of Informatics Practices, the focus is on the effective use of application of software in various areas of work and, therefore, he submitted that even the syllabus of Computer Science is different than the syllabus of Informatics Practices and, therefore, he

submitted that the authority has rightly considered the marks accordingly by excluding the marks of the subject Informatics Practices. Mr.Desai also submitted that the total marks of the subject Computer Science is of 70% for theory and 30% for practical, whereas in the paper of Informatics Practices, the total marks for theory is 60% and the Rule provides the total marks of such subjects, even for CBSE, as 310 and, therefore, he submitted that if 60 is considered as the marks of the subject of Informatics Practices, the total would come to 300 and not 310 and, therefore, he submitted that therefore also the parity cannot be given to the petitioner, who had opted for the subject of Informatics Practices.

6. It is true that normally this Court would not substitute its wisdom in place of the considerations and wisdom of the academicians, unless it creates absurd results or it is absurd or perverse on the face of it. In the present case, the syllabus, which are produced at Annexure "A" referred to hereinabove, are of concerning and related to computers and, therefore, there is no manner of doubt in the mind of the Court that the Information Technology or Informatics Practices, which includes various syllabus is a computer related subject. Rule 11 does not provide for subject of Computer Science, but it provides for computer related subjects and, therefore, if a subject is computer related, the necessary consequences would be that the marks obtained in such subjects is required to be included for the purpose of preparing merit list. The contention raised on behalf of respondent No.3 is purely on the basis that the Rule provides for Computer Science subjects which is not correct as per language of Rule 11. As such, had the rule provided for the marks obtained in the subjects of Computer Science, the matter would have been different. Possibly one may say that the Computer Science subject would differ from the subject of Informatics Practices, but it cannot be said that the subject Informatics Practices is not related to computers. As such, Informatics Practices is not only directly connected with the computers, but is also based on Computer Science technology and, therefore, the subject of Informatics Practices cannot be said to be non-related to computers. Since the Rule provides for only subjects related to computers, I find that the interpretation given by respondent No.3 to the provisions of Rule 11 by excluding the subject of Informatics Practices appears to be perverse on the face of it, because while giving said interpretation, the authority has not considered the basic aspect that the Informatics Practices can be said to be a subject related to computers. If the student has

opted for a subject related to computers and if marks are excluded for the purpose of considering the merits, it would, in my view, create absurd situation and, therefore, I find that the authority is not justified in excluding the marks of the subject Informatics Practices while preparing merit list since the said subject can be said to be a subject related to computers.

7. The aforesaid takes me to examine the contention on the basis of parity of total marks. The definition as sought to be canvassed by the learned AGP that the total marks of the subject or the paper of Computer Science was of 70, whereas the Informatics Practices was of 60 marks and, therefore, it would not result into the total of 310 marks also, in my view, is misconceived in as much as the natural and the consequential effect is required to be given. If a student has secured a particular mark out of the total marks of 60 in a subject, the same can appropriately be converted by making comparison with 70 marks and accordingly be considered by the authority while preparing merit list with another student, who has secured marks out of 70. It may be that if the subject of Informatics Practices is included as the subjects related to computers, instead of total of 310, it may be 300, but the same cannot be validly contended as ground that there is no parity. The total number of marks in a question paper, in my view, would not make any difference, because ultimately on the basis of merits secured at the said examinations or in the concerned subject by calculating the percentage, the merit list is to be prepared and not on the basis of marks, when the total marks of subjects are different. Therefore, respondent No.3 while giving correct effect to the provisions of Rule 11 after considering the subject of Informatics Practices as the subject related to computers, can proportionally consider the marks obtained by the petitioner out of 60 marks, making it comparable with the marks of 70.

8. Since the matter is being considered today and Mr.Desai, learned AGP has informed the Court that the admission process is already going on, in my view, the discretion demands that the admissions which are already granted on the basis of merit list which is prepared by the authority should not be disturbed. However, at the same time, the effect may be given henceforth and it would also be open to the authority to consider the merit of other similarly situated students, who have passed CBSE examinations by opting subject of Informatics Practices.

9. In view of the aforesaid discussion, petition is allowed by directing the respondents to consider the marks of the petitioner secured in the subject of Informatics Practices as the subject related to computer and as a consequence thereof, the respondents shall consider the merit of the petitioner accordingly for the purpose of giving admission to the professional colleges, in accordance with law.

10. Rule made absolute accordingly. Considering the facts and circumstances of the case, no cost. Direct service is permitted.

10-9-2003 (Jayant Patel, J.)

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